

TEXT OF NEW AND AMENDED POLICY DECLARATIONS

Amended language is reflected with underlines, deleted language with ~~strikeouts~~.

1.1.5 Reconsideration of Complaints Closed Upon Initial Review

If a matter is closed by the commission at initial review because a complaint does not state sufficient facts or information to establish a prima facie case of misconduct, the complainant shall be informed that if further new information is provided, it will be reviewed and, if sufficient, the complaint will be reconsidered.

[Approved 6/28/17.]

1.6.5 Authorization for Supplemental Staff Inquiry and Preliminary Investigation Letters Between Meetings

When a judge's response to a staff inquiry or preliminary investigation letter fails to respond to an allegation in the letter or reveals additional instances or a variation of the same conduct that is the subject of the commission's investigation, the chairperson or acting chairperson may authorize staff to send a supplemental letter to obtain the judge's explanation concerning the omitted, additional or variation of the allegations.

[Approved 2/1/17.]

1.8 Cases Removed From Active Calendar

The commission may defer its consideration of a pending ~~matter-staff inquiry or preliminary investigation~~ and direct that the ~~staff inquiry or preliminary investigation-matter~~ be removed from the commission's active calendar. Circumstances which may warrant deferral in the commission's consideration of a matter include: when the case from which the complaint arose is still pending before the judge; when an appeal or ancillary proceeding is pending in which factual issues or claims relevant to the complaint are to be resolved; when criminal or other proceedings involving the judge are pending. In appropriate cases, the complainant may be notified that the commission has deferred action on the complaint.

When a matter is removed from the commission's active calendar, it shall be placed on the commission agenda ~~periodically as required by the circumstances, at intervals not to exceed six (6)~~

~~months~~ at every meeting, and subject to active consideration at the discretion of the commission.

[Approved 5/28/97, amended 3/22/17.]

5.4 Procedure in Disability Retirement Matters

(1) An application for disability retirement must include: a consent to disability retirement, executed by the judge or, in an application by a JRS II judge, a family member or legal representative acting on behalf of the judge pursuant to Government Code section 75560.1(a), and a medical certificate of disability, executed under penalty of perjury by a licensed physician. To complete the application, the commission ordinarily will require a medical report prepared by that physician in support of certification, which shall include a statement specifying the nature of the judicial duties that cannot be efficiently discharged due to the judge's disability, and all pertinent medical documentation.

A judge seeking the disability retirement allowance provided under Government Code section 75560.4(b) must inform the commission in the judge's ~~application~~ consent to disability retirement that the judge is seeking a determination by the commission whether the disability is predominantly a result of injury arising out of and in the course of judicial service. The commission will not make a determination whether the injury is predominantly a result of injury arising out of and in the course of judicial service if the judge is entitled to 65 percent of the judge's final compensation on the effective date of the disability retirement under Government Code section 75560.4(a).

(2) When a judge submits an application for disability retirement, the commission will advise the judge if the certifying physician's report or other medical documentation supporting the application is inadequate, and will give the judge thirty (30) days to supply more complete data. The judge shall cooperate in obtaining any medical/psychiatric records the commission or the special master needs in evaluating the judge's disability application.

(3) Following receipt of a complete application, the commission may request review of medical reports and documents by independent consultants and/or medical examiners. One or more independent medical examinations and/or additional medical information may be requested within one hundred twenty (120)

days of the first commission meeting after receipt of complete medical records. This time may be extended for good cause. If an independent medical examination is conducted, the commission will provide a copy of the examiner's report to the judge. If the examiner concludes that the judge suffers from a disability that precludes the efficient discharge of judicial duties and is permanent or likely to become so, the examiner's report shall include a statement specifying the nature of the judicial duties that cannot be efficiently discharged due to the disability.

If the judge has informed the commission that the judge is seeking a disability retirement allowance pursuant to Government Code section 75560.4(b), the examiner's report shall also set forth the examiner's opinion whether the disability is predominantly a result of injury arising out of and in the course of judicial service and the basis for that opinion.

(4) Within sixty (60) days of the first commission meeting after receipt of all reports by consultants and medical examiners, the commission will: approve the application, or tentatively deny it, or extend its time to act on the application for good cause, "good cause" to include circumstances in which the judge's condition cannot yet be deemed permanent or likely to become so, within the meaning of Government Code section 75060 or 75560.1. If the commission extends its time to act, notice of such extension shall be provided to the judge.

(5) If the commission approves the application, the commission will refer the application to the Chief Justice. If the Chief Justice approves the application, the Judges' Retirement System will be informed that the disability application has been approved. The commission may also prepare a statement of findings specifying the nature of the judicial duties that cannot be efficiently discharged due to the disability.

(6) If the commission tentatively denies the application, or approves the application but tentatively determines that the disability is not predominantly a result of injury arising out of and in the course of judicial service, the commission will within thirty (30) days issue a tentative decision setting forth the reasons for the denial. The tentative decision will be provided to the judge upon issuance.

(7) If the commission approves the disability application, but tentatively determines that the disability is not predominantly a result of injury arising out of and in the course of judicial service,

the commission will refer the application to the Chief Justice. If the Chief Justice approves the application, Judges' Retirement System will be informed that the disability application has been approved, subject to a pending determination whether or not the disability is predominantly a result of injury arising out of and in the course of judicial service.

(8) A tentative denial of the disability application or a determination that the disability is not predominantly a result of injury arising out of and in the course of judicial service becomes final thirty (30) days after issuance unless, within thirty (30) days of the tentative denial; or tentative determination, the judge (1) files a request to submit additional information to the commission, or (2) files a request to present additional evidence for an evidentiary hearing to contest the tentative denial or tentative determination. A request to submit additional information shall explain the relevance of the additional information to the commission's determination(s). A request for an evidentiary hearing shall specify the factual and legal issues to be contested at the evidentiary hearing.

(9) If a judge's request to submit additional information is granted, the commission shall reconsider the tentative denial of the application or tentative work-related determination based on the new information submitted. Within sixty (60) days of the first commission meeting after receipt of the new information, the commission shall make a decision approving the application and referring it to the Chief Justice, or denying the application, and, if requested, shall make a determination either that the disability is work-related or is not work-related and advise the Judges' Retirement System.

(10) Within thirty (30) days of the first commission meeting after such filing a judge requests an evidentiary hearing, the commission will appoint a special master authorized to take evidence, obtain additional medical information, and take any other steps the special master deems necessary to resolve the matter on the matter, and to report to the commission. The proceedings before the special master are not a de novo review of the basis for the commission's tentative denial of the disability application or tentative determination regarding work-relatedness. The special master's report to the commission shall contain proposed findings of fact and conclusions of law on the issues specified in the judge's request for an evidentiary hearing and on any other issues raised by the parties during the proceedings, as deemed relevant by the special master.

(11) Upon appointment, the special master shall be given a copy of the judge's application for disability retirement, the commission's tentative denial of the application or tentative determination that the disability is not predominantly a result of injury arising out of and in the course of judicial service, and any medical and/or psychiatric reports considered by the commission. These documents may be considered by the special master in reaching proposed findings and conclusions.

(12) The special master may require briefing from the parties before and after the evidentiary hearing. The judge and the examiner shall submit a list of witnesses and exhibits to be presented at the evidentiary hearing within ten days prior to the hearing, unless otherwise specified by the special master.

(13) The California Evidence Code shall be applicable to an evidentiary hearing before a special master held pursuant to policy declaration 5.4(6).

(7-14) Within one hundred ~~twenty-eighty~~ (120-180) days after the appointment of a special master, the master will refer the matter back to the commission with a report containing proposed findings, unless the special master requests and is granted an extension of time from the chairperson or another member designated by the chairperson or the commission.

(8-15) Within ~~sixty (60) ninety (90)~~ days of the first commission meeting following such referral, the commission will make a decision approving the application and referring it to the Chief Justice or denying the application and advising the Chief Justice, or, pursuant to Government Code section 75560.4(b), determining either that the disability is predominantly a result of injury arising out of and in the course of judicial service or that it is not such an injury and advising Judges' Retirement System.

[Approved 5/28/97; amended 6/21/00, 3/22/17.]

5.5 Disability Applications: Burden of Proof

Unless Government Code section 75062, 75063, or 75064, 75562, 75563 or 75564 applies, a judge seeking disability retirement must establish by a preponderance of the evidence that the judge is eligible for disability retirement under section 75560 or 75560.1 and that the judge is unable to discharge efficiently the duties of judicial office by reason of mental or physical disability that is or is likely to become permanent. A judge seeking benefits

under section 75560.4(b) must establish by a preponderance of the evidence that the disability is predominantly a result of injury arising out of and in the course of judicial service.

[Approved 5/28/97; amended 1/30/13, 2/1/17.]